

Translation

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INTERNATIONAL COOPERATION TREATY

PCT

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 15870/PCT ge	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/012356	International filing date (day/month/year) 05 November 2003 (05.11.2003)	Priority date (day/month/year) 06 November 2002 (06.11.2002)
International Patent Classification (IPC) or national classification and IPC G01N 1/42		
Applicant FRAUNHOFER-GESELLSCHAFT ZUR FÖRDERUNG DER ANGEWANDTEN FORSCHUNG		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of <u>4</u> sheets, including this cover sheet. <input type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT). These annexes consist of a total of _____ sheets.
3. This report contains indications relating to the following items: I <input checked="" type="checkbox"/> Basis of the report II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application

Date of submission of the demand 02 June 2004 (02.06.2004)	Date of completion of this report 04 February 2005 (04.02.2005)
Name and mailing address of the IPEA/EP Facsimile No.	Authorized officer Telephone No.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International Application No.

PCT/EP2003/012356

I. Basis of the report

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed
- ☒ the description:
pages _____ 1-16 _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☒ the claims:
pages _____ 1-18 _____, as originally filed
pages _____, as amended (together with any statement under Article 19
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☒ the drawings:
pages _____ 1/8-8/8 _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
pages _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig _____

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International Application No.
PCT/EP 03/12356**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims	15-18	YES
	Claims	1-14	NO
Inventive step (IS)	Claims	15-18	YES
	Claims	1-14	NO
Industrial applicability (IA)	Claims	1-18	YES
	Claims		NO

2. Citations and explanations

Reference is made to the following documents:

D1: WO 02/46719 A (HAGEDORN ROLF; FUHR GUENTER
(DE); FRAUNHOFER GES FORSCHUNG (DE); Z)
13 June 2002 (2002-06-13)

D2: GB-A-2 022 452 (SHUPAK W) 19 December 1979
(1979-12-19)

1. Novelty and inventive step (PCT Article 33(2) and (3))

1.1 Claim 1: D1, figure 23, shows a carrier device with sample chambers (623) for cryogenic preservation which consist of a substrate 810 (frame part) and a cover layer 830 (frame part) and contact each other in the assembled state. Thus the subject matter of claim 1 is not novel with respect to D1 (PCT Article 33(2)).

1.2 Claim 1: Even if the D2 device is not expressly provided for cryogenic preservation, it is suitable therefor. Furthermore, a sample chamber (e.g. test tube) can be secured between the side faces. Since the D2 retaining device is composed of two frame parts, the subject matter of claim 1 also lacks

novelty with respect to D2 (PCT Article 33(2)).

1.3 **Claims 2 to 14:** The subject matter of claims 2 to 14 does not appear to contain any features which are novel (PCT Article 33(2)) and involve an inventive step (PCT Article 33(3)).

1.4 **Claim 15:** The subject matter of claim 15 concerns a method of storing a suspension sample in a low temperature state, in the case of which a sample chamber made of a flexible, elastically deformable material is secured in a carrier device as per claims 1 to 13 and is placed in a cryogenic medium. The available prior art does not disclose using a sample chamber made of a flexible, elastically deformable material in the D1 and D2 devices. As a result, stable and reliable mounting of these sample chambers is attained. Even if the D1 and D2 devices are suitable for these sample chambers, there is nothing to suggest using them for this purpose. Therefore the subject matter of claim 15 involves an inventive step (PCT Article 33(3)).